

SUPREME COURT OF INDIA

The Central Board of Secondary Education

Vs.

T.K.Rangarajan

C.A.No.11230 of 2018

(S.A.Bobde and L.Nageswara Rao,JJ.,)

22.12.2018

JUDGMENT

S.A.Bobde,J.,

SLP(C)No.18525 of 2018

1. Leave granted.
2. One of these appeals is preferred by the Central Board of Secondary Education (CBSE) and the rest are filed by students who have appeared in National Eligibility-cum-Entrance Test-UG (for short 'NEET-UG'), 2018 and have taken the exam in English. This test is conducted according to the regulations framed under the Indian Medical Council Act, 1956 and the Dentists Act, 1948.
3. The questions in the NEET-UG, 2018 paper consists of 180 objective type questions. Bi-lingual questions were set for this examination in English with an option of an additional regional language. The correct answer to the questions presented in the exam is one of the four options offered for each question. Each correct answer carries four marks and each incorrect answer results in the deduction of one mark.
4. In a writ petition filed by the students, who had taken the examination in the regional language of Tamil. The High Court of Madras noticed certain mistranslations in the Tamil version for the questions and answers in 49 questions. The High Court decided that nearly 24,000 students who took the examination in Tamil are entitled to four grace marks for each incorrectly translated question therefore, each of these students are entitled to a total of 196 grace marks, (i.e., 49 x 4).
5. The result is obviously an unprecedented awarding of marks to a certain section of students who opted for the examination in Tamil, thus securing them higher marks than all the other type of students irrespective of their actual performance in the examination. The problem arises because of the bi-lingual system of the examination.

6. Out of 13,23,672 lakh students, who appeared for the examination, approximately 10.5 lakh took it in English, approximately 1.5 lakh opted for regional languages and of these about nearly 24,000 candidates took the examination in Tamil language.

7. The dispute in the present case concerns these 24,000 students only who have been benefited by the High Court's order and have been awarded 4 marks for the 49 questions each irrespective of their actual answers.

8. The genesis is as follows - Owing to nation wide increasing demand that the NEET examination should also have the option of a regional language, the CBSE introduced question papers in 13 languages, i.e. English and 12 regional languages. In the year 2017-18, apparently, two sets of questions papers were set. One in English and the other in the regional languages. This examination was challenged since it was believed that the objective of the common entrance test cannot be fulfilled if the questions are different. The matter came up before this Court. The CBSE justified the method adopted by it as the principle of equivalent difficulty. This Court in Writ Petition (C) No.390 of 2017 vide order dated 25.01.2018 observed as follows: -

"We are disposed to think that it would be appropriate for CBSE the questions papers set in English, Hindi or any other regional languages should be the same. It shall facilitate the student's community to choose the language they intend to adopt to answer the questions and in that event the principle of uniformity shall be appositely maintained for all the categories of students. When there is appropriate translation, the identity and uniformity of the question papers will be in the realm of certainty. We have been apprised that it is difficult to translate certain areas in regional languages pertaining to medical terms. In such circumstances, it shall be within the domain of the experts to use the medical terms as they are."

This would help the students to choose the language they adopt for answering the questions and there would be uniformity for all categories of students, i.e., those opting to answer in English and those opting to answer in a regional language. In turn, the CBSE decided and stated before this Court that the pattern of the NEET-UG, 2018 examination as regards to language would be as follows:- "(c) Language of the Question Papers.

i. Candidates can opt for question Papers in either of the following languages:

ENGLISH HINDI ASSAMESE BENGALI GUJARATI KANADA MARATHI
ORIYA TAMIL TELUGU URDU

ii. Option of medium of Question Paper will be exercised while filing in the application form. The option once exercised by candidates cannot be changed later.

iii Candidates opting for English would be provided Test Booklet in English only.

Iv Candidates opting for Hindi would be provided Bilingual Test Booklet i.e. in Hindi and in English.

V Candidates opting for vernacular languages would be provided Bilingual Test Booklet i.e. in selected language and in English.

vi. In case of any ambiguity in translation of any of the questions, its English version shall be treated as final."

9. Instruction (vi) above, assumes significance in this case. This instruction was also incorporated in the hall ticket which allowed admission to the examination hall to ensure that it is not missed.

10. The main grievance of the Petitioners before the High Court seems to have been that the Tamil translation of the English questions misled them. As the translation did not have the same meaning as the English questions, since some of the words used in Tamil were not accurately translated from English. This led to incorrect answers. This being so, the Petitioners prayed for the grant of 'Grace Marks' to all the students who gave the NEET-UG, 2018 Examination in the Tamil medium for all 49 questions in which such errors occurred.

11. The High Court held that the 49 question in Tamil were ambiguous especially in respect of the students who had throughout studied in Tamil medium and had scant knowledge of English. The High Court further noted that the average knowledge of English even for one who has studied in an English Medium school is just about adequate.

12. The Division Bench seems to have lost sight of the fact that the students appearing for the NEET-UG, 2018 Examination applied for admission to the course of MBBS/BDS which is entirely taught in English. The facility of a bilingual question paper was essentially meant for the students who were more familiar in Tamil than in English. Moreover, the expert body which set the examination seems to have contemplated the difficulty that may arise in translation of words from English to Tamil and had taken due precaution by inserting instruction (vi) (supra) that required the students to refer to the English version in case of any ambiguity. This implies that knowledge of the subject in English was considered a requirement and students were expected to resolve any ambiguity by reference to the questions in English Language. We must make note that there is no grievance whatsoever that there was any difficulty about the questions in English language.

13. Some of the examples of the discrepancies in translation which occurred in the Tamil version, are as follows:

In the English version the students were asked to select the incorrect option for the following sets of examples for divergent evolution: -

(1) Forelimbs of man, bat and cheetah

- (2) Heart of bat, man and cheetah
- (3) Eye of octopus, bat and man
- (4) Brain of bat, man and cheetah

14. If one has a look at actual discrepancies in the questions that were said to have created confusion, it seems that the word with the imprecise meaning could have been easily discovered to be faulty and a simple reference to the English version would have clarified the same. A simple reference to the context in which the imprecise word occur in the Tamil version would show that the word could not have that meaning at all and there was obviously some mistake which needed to be resolved by reference to the English version.

15. According to the Respondent No. 1 in the Tamil version the word 'Cheetah' is translated as 'Sita'. Now it would be obvious to apply the common sense that Sita, which is a name of Goddess and used for human beings, cannot occur in the example for divergent evolution that deals with man, bat and cheetah etc. This mistake in 'Cheetah' appearing as 'Sita' is said to have occurred because of mispronunciation of the word 'Chiruthaiyin' as 'Seethavin'. Similarly, the word 'Octopus' has been translated as 'Aathadapuz' which seems to be the result of mispronunciation. Likewise, it was pointed out that in respect of translating 'Ragam' which means variety. In Tamil translation was 'Nagam' which means 'Nail'. We do agree that a plain reading, sounds absurd but it would be obvious to anyone that the word 'Nail' would make no sense where the question deals with a new variety of rice which was patented by a foreign company simply because there cannot be a nail of rice. The errors were not factual and could have easily been answered by referring to the English Version.

16. We may not be understood to be taking the view that mistakes in translation, which give a disparate meaning, should be allowed to appear in question papers. The translation must be accurate. We are informed that from the next academic year 2019-20, the NEET Examination will be conducted by the National Testing Agency (NTA), a society set up by the Government of India with the objective of conducting examination for grant of admission etc. The NTA is established to ensure that the methodology of translation to conduct the examination is improved. In order to make it foolproof, it is proposed that the translation will be done by subject experts who are proficient in both the languages i.e. the source language and the target language.

17. The translation will be done from the target language to the source language and back to the target language. Thus, for example a question in English translated in Tamil will be re-translated back to English. This dual translation approach will remove any chance of ambiguity in the question paper. In spite of this safeguard, it is proposed that in case of any ambiguity between a regional language and English it will the English version which will be final as held by this Court in the order dated 25.01.2018 referred above.

We find this last mentioned clause is extremely significant to ensure that the students have some basic knowledge of English even if they are allowed the facility to write the

examination in their regional language. Presumably, this is because the entire education for MBBS/BDS courses throughout the country are taught in English.

18. Assuming that there was some justification in the plea that students were prevented from understanding the question and therefore could not answer properly, we find it difficult to sustain the remedy provided by the High Court. The number of students that appeared in the NEET-UG, 2018 was 13,23,672, approximately 10.5 lakh took it in English, approximately 1.5 lakh opted for regional languages and of these nearly 24,000 candidates took the examination in Tamil language. Because of a mistake in translation which could have been detected and avoided by the students, we find it unjust that all the students across the board who took the examination in Tamil have been awarded four marks for all the 49 questions without any reference to the answer of those questions. The consequence is equally unjust and unacceptable as the students who gave the examination in Tamil have been unduly benefited only because they opted to give examination in Tamil. It is said that there are some students who might have otherwise failed but for the addition of marks by the High Court most of these students have scored higher than those who gave the examination in English and other regional languages. This is mainly due to the blind allocation of 196 marks to every student who gave the exam in Tamil.

19. In *Guru Nanak Dev University v. Saumil Garg and others*¹, in somewhat similar circumstances where after the CBSE opined that 10 out of the 21 key answers were incorrect, this Court called for a report from the CBSE and the Delhi University as regards correctness of those 10 answers and thereupon in order to preserve merit the Court directed the University to re-evaluate the answers to the aforesaid 8 questions with reference to key answers. This course adopted by this Court was to prevent arbitrariness in awarding marks. We see no attempt in the impugned judgement to have the marks evaluated by an independent expert body instead the High Court resorted to blind allocation of full marks for each of the questions. In fact, in the *Guru Nanak Dev University* case (supra) wherein this Court found that in respect of vague questions which were incapable of correct answers, the University could not have given credit for those questions to all the students, irrespective if the said questions have been attempted or not. Even so by the impugned judgment, the High Court has made no attempt to see whether the students have in fact attempted answers to the questions, which were claimed to be imperfectly translated and has proceeded to award the full marks for 49 questions to all candidates who had opted to give the examination in Tamil. The method adopted by the High Court is manifestly arbitrary and unjustified and cannot be sustained.

20. The list of students who opted to give the NEET-UG, 2018 Examination in Tamil after the addition of 196 marks is startling. For instance, a student who got 260 marks has been awarded a total of 456 marks. A student with 137 marks becomes entitled to 333 marks and the student who got 92 marks becomes entitled to 288 marks. Even students who have 21 marks been entitled to 217 marks. It is clear that the High Court lost sight of the primary duty of Court in such matter that is to avoid arbitrary results.

21. The learned counsel for the Respondent No. 1 placed reliance on the judgment of this Court in *Kanpur University, Through Vice Chancellor and Others v. Samir Gupta and Ors*². According to the learned counsel this Court in the above case granted marks to all the students appearing in the examination after finding an error in the answer key. The learned counsel submits that the same approach should be adopted in the present case. That case was decided in entirely different circumstances. In the first place, the examination then was not bi-lingual. Moreover, the question before this Court was called upon to decide whether a student who answered the question correctly be failed for an answer which though correct, doesn't accord with the key answer supplied by the University.

No such situation has arisen in the case before us. This is not a case wherein the students claimed that they have been failed though they gave the correct answer; merely because the answer key was wrong. The case is that the Student couldn't answer because the question was wrongly translated from English; there was no dispute about the correctness of question in English. In any case, in the Kanpur case (supra) the relief granted to the students was the grant of three marks for each of the questions answered correctly by them and the addition of one mark since one mark was wrongly deducted for the questions wrongly answered. The award of marks by the Court didn't result in granting any undue advantage to one section of students over the other students.

22. For these reasons, we set aside the impugned judgment of the High Court of Madras dated 10.07.2018. We direct that from the year 2019-20 onwards the NEET-UG Examination will be conducted by the National Testing Agency and the bilingual examination will be conducted after the question paper is translated as set out according to the instructions in the affidavit dated 22.10. 2018 signed by Dr. Vikas Gupta, Director, National Testing Agency as mentioned above.

23. Accordingly, the appeals are allowed.

Judgment Referred.

¹(2005) 13 SCC 0749

²(1983) 4 SCC 0309